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Attorneys for Defendant
WM Corporate Services, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Russell A. Smith,

Plaintiff,

v.

WM Corporate Services, Inc.,

Defendants.

No. CV-19-01579-PHX-SPL

**DEFENDANT WM CORPORATE
SERVICES, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant WM Corporate Services, Inc. ("WM" or "Defendant") hereby answers the Complaint filed by Plaintiff Russell A. Smith ("Plaintiff") as set forth below.

THE PARTIES

1. Responding to the allegations in paragraph 1 of the Complaint, Defendant lacks information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, and on that basis, denies the same.

2. Responding to the allegations in paragraph 2 of the Complaint, Defendant admits that Defendant WM Corporate Services, Inc. is a Delaware corporation doing business in Maricopa County.

3. Responding to the allegations in paragraph 3 of the Complaint, Defendant avers that said allegations are a conclusion of law which requires no answer. To the extent

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1 an answer is required, Defendant denies each and every allegation contained in paragraph
2 3 of the Complaint.

3 4. Responding to the allegations in paragraph 4 of the Complaint, Defendant
4 avers that said allegations are conclusions of law that do not require an answer. To the
5 extent that an answer is required, Defendant denies each and every allegation contained in
6 paragraph 4 of the Complaint.

7 5. Responding to the allegations in paragraph 5 of the Complaint, Defendant
8 avers that said allegations are conclusions of law that do not require an answer. To the
9 extent that an answer is required, Defendant denies each and every allegation contained in
10 paragraph 5 of the Complaint.

11 6. Responding to the allegations in paragraph 6 of the Complaint, Defendant
12 lacks sufficient information to form a belief as to the truth of the allegations and on that
13 basis denies the same.

14 7. Responding to the allegations in paragraph 7 of the Complaint, Defendant
15 denies engaging in any wrongdoing and further denies any liability arising out of
16 Plaintiff's causes of action. Defendant admits that jurisdiction is proper in this Court.

17 8. Responding to the allegations in paragraph 8 of the Complaint, Defendant
18 admits that jurisdiction is proper in this Court.

19 **BACKGROUND FACTS**

20 9. Responding to the allegations in paragraph 9 of the Complaint, Defendant
21 lacks sufficient information to form a belief as to the truth of the allegations and denies
22 the same on that basis.

23 10. Responding to the allegations in paragraph 10 of the Complaint, Defendant
24 admits that Plaintiff worked for Waste Management from around February 10, 2014
25 through September 30, 201 as an Inside Sales Manager. Defendant denies each and every
26 remaining allegation in paragraph 10 not specifically admitted herein.

27 11. Responding to the allegations in paragraph 11 of the Complaint, Defendant
28 admits that as an Inside Sales Manager, Plaintiff's responsibilities included, among other

1 things, overseeing the daily operations of his team, assisting with customer interactions,
2 coaching and training his sales team, scheduling and conducting team meetings,
3 documenting performance of those he supervised, motivating his team to exceed their
4 goals, interacting with other WM staff including sales directors and field personnel.
5 Defendant denies each and every remaining allegation in paragraph 11 not specifically
6 admitted herein.

7 12. Responding to the allegations in paragraph 12 of the Complaint, Defendant
8 lacks sufficient information to form a belief as to the truth of said allegations and denies
9 the same on that basis.

10 13. Responding to the allegations in paragraph 13 of the Complaint, Defendant
11 denies said allegations.

12 14. Responding to the allegations in paragraph 14 of the Complaint, Defendant
13 admits that in or around 2015, Arizona's sales center office had approximately nine sales
14 teams which were each headed by a sales manager. Defendant denies each and every
15 remaining allegation in paragraph 14 not specifically admitted herein.

16 15. Responding to the allegations in paragraph 15 of the Complaint, Defendant
17 denies said allegations.

18 16. Responding to the allegations in paragraph 16 of the Complaint, Defendant
19 admits that a 2014 year-end performance appraisal was prepared for Plaintiff. Defendant
20 avers that the performance appraisal speaks for itself. Defendant denies each and every
21 remaining allegation in paragraph 16 not specifically admitted herein.

22 17. Responding to the allegations in paragraph 17 of the Complaint, Defendant
23 denies said allegation.

24 18. Responding to the allegations in paragraph 18 of the Complaint, Defendant
25 avers that Plaintiff has not produced a copy of the email purportedly referenced. At this
26 time, and without production of the email allegedly quoted, Defendant lacks sufficient
27 information to form a belief as to the truth of said allegations and denies the same on that
28 basis.

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1 19. Responding to the allegations in paragraph 19 of the Complaint, Defendant
2 avers that Plaintiff has not produced a copy of the email purportedly referenced. At this
3 time, and without production of the email allegedly quoted, Defendant lacks sufficient
4 information to form a belief as to the truth of said allegations and denies the same on that
5 basis.

6 20. Responding to the allegations in paragraph 20 of the Complaint, Defendant
7 lacks sufficient information to form a belief as to the truth of said allegations and denies
8 the same on that basis.

9 21. Responding to the allegations in paragraph 21 of the Complaint, Defendant
10 denies said allegations.

11 22. Responding to the allegations in paragraph 22 of the Complaint, Defendant
12 denies said allegations.

13 23. Responding to the allegations in paragraph 23 of the Complaint, upon
14 information and belief, Defendant admits that it learned Plaintiff fell asleep during a
15 training class and that Plaintiff was warned that sleeping on the job was not permitted.
16 Defendant denies each and every remaining allegation in paragraph 23 not specifically
17 admitted herein.

18 24. Responding to the allegations in paragraph 24 of the Complaint, Defendant
19 admits it learned Plaintiff fell asleep during a work meeting and that Plaintiff was warned
20 that sleeping on the job was not permitted. Defendant denies each and every remaining
21 allegation in paragraph 24 not specifically admitted herein.

22 25. Responding to the allegations in paragraph 25 of the Complaint, Defendant
23 admits that a Written Warning Communication Document dated August 26, 2014 was
24 prepared for Plaintiff. Defendant avers that the document speaks for itself. Defendant
25 denies each and every remaining allegation in paragraph 25 not specifically admitted
26 herein.

27 26. Responding to the allegations in paragraph 26 of the Complaint, Defendant
28 denies said allegations.

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1 27. Responding to the allegations in paragraph 27 of the Complaint, Defendant
2 denies said allegations.

3 28. Responding to the allegations in paragraph 28 of the Complaint, Defendant
4 denies said allegations.

5 29. Responding to the allegation in paragraph 29 of the Complaint, said
6 allegation constitutes a statement that does not require an answer. To the extent an answer
7 is required, Defendant denies said allegation.

8 30. Responding to the allegations in paragraph 30 of the Complaint, Defendant
9 denies said allegations.

10 31. Responding to the allegations in paragraph 31 of the Complaint, Defendant
11 denies said allegations.

12 32. Responding to the allegations in paragraph 32 of the Complaint, Defendant
13 denies said allegations.

14 33. Responding to the allegations in paragraph 33 of the Complaint, Defendant
15 denies said allegations.

16 34. Responding to the allegations in paragraph 34 of the Complaint, Defendant
17 denies said allegations.

18 35. Responding to the allegations in paragraph 35 of the Complaint, Defendant
19 denies said allegations.

20 36. Responding to the allegations in paragraph 36 of the Complaint, Defendant
21 admits that Plaintiff signed the Written Warning Communication Document dated August
22 26, 2014 on or around October 8, 2014. Defendant denies each and every remaining
23 allegation in paragraph 36 of the Complaint not specifically admitted herein.

24 37. Responding to the allegations in paragraph 37 of the Complaint, Defendant
25 denies said allegations.

26 38. Responding to the allegations in paragraph 38 of the Complaint, Defendant
27 admits that Plaintiff was issued a 2014 annual review in or around March of 2015.
28 Defendant avers that the annual review speaks for itself. Defendant denies each and every

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1 remaining allegation in paragraph 38 of the Complaint not specifically admitted herein.

2 39. Responding to the allegations in paragraph 39 of the Complaint, Defendant
3 admits that as part of Plaintiff's job he was required to supervise the eBusiness team which
4 worked between 5:00 a.m. and 5:30 p.m. every day. Defendant denies each and every
5 remaining allegation in paragraph 39 not specifically admitted herein.

6 40. Responding to the allegations in paragraph 40 of the Complaint, upon
7 information and belief, Defendant admits that Plaintiff was approved for intermittent
8 FMLA leave in accordance with his treating physician's recommendation effective March
9 31, 2015 through September 30, 2015. Defendant denies each and every remaining
10 allegation in paragraph 40 not specifically admitted herein.

11 41. Responding to the allegations in paragraph 41 of the Complaint, Defendant
12 admits that Plaintiff sent Bradley Cea an email dated April 17, 2015. Defendant avers that
13 the email speaks for itself. Defendant denies each and every remaining allegation in
14 paragraph 41 not specifically admitted herein.

15 42. Responding to the allegations in paragraph 42 of the Complaint, Defendant
16 admits that Bradley Cea and Plaintiff exchanged emails on or around April 17, 2015 and
17 Defendant avers that the e-mails speak for themselves.

18 43. Responding to the allegations in paragraph 43 of the Complaint, Defendant
19 denies said allegations.

20 44. Responding to the allegations in paragraph 44 of the Complaint, Defendant
21 admits that on or around May 20, 2015, Plaintiff requested to change his schedule.
22 Defendant avers that the May 20, 2015 e-mail speaks for itself. Defendant also admits
23 that it met with Plaintiff regarding his schedule following his May 20, 2015 request.
24 Defendant denies each and every remaining allegation in paragraph 44 not specifically
25 admitted herein. Defendant further avers that in response to Plaintiff's May 20, 2015
26 request, he was provided with a Request for a Reasonable Accommodation packet for his
27 physician to complete.

28 45. Responding to the allegations in paragraph 45 of the Complaint, Defendant

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1 admits that Defendant's Human Resource Manager Corina Hernandez e-mailed Plaintiff
2 on May 26, 2015. Defendant avers that the email speaks for itself. Defendant denies each
3 and every remaining allegation in paragraph 45 not specifically admitted herein.

4 46. Responding to the allegations in paragraph 46 of the Complaint, Defendant
5 admits that Ms. Hernandez sent Plaintiff a Request for Limited Medical Information form
6 which Plaintiff was asked to have his health care provider complete. The Limited Medical
7 Information form speaks for itself. Defendant further admits that Plaintiff returned a
8 Limited Medical Information form purportedly prepared by and signed by Dr. Arpino
9 dated July 1, 2015, which speaks for itself. Defendant denies each and every remaining
10 allegation in paragraph 46 not specifically admitted herein.

11 47. Responding to the allegations in paragraph 46 of the Complaint, Defendant
12 admits that Ms. Hernandez sent Plaintiff a Request for Limited Medical Information form
13 which Plaintiff was asked to have his health care provider complete. The Limited Medical
14 Information form speaks for itself. Defendant further admits that Plaintiff returned a
15 Limited Medical Information form purportedly prepared by and signed by Dr. Arpino
16 dated July 1, 2015, which speaks for itself. Defendant denies each and every remaining
17 allegation in paragraph 47 not specifically admitted herein.

18 48. Responding to the allegations in paragraph 48 of the Complaint, Defendant
19 admits that Plaintiff provided Ms. Hernandez with a Limited Medical Information form
20 purportedly prepared by and signed Dr. Arpino dated July 1, 2015, which speaks for itself
21 and requested a "[c]onsistent work schedule starting time at 6 A.M." Defendant denies
22 each and every remaining allegation in paragraph 48 not specifically admitted herein.

23 49. Responding to the allegations in paragraph 49 of the Complaint, Defendant
24 admits that in or around July of 2015, Defendant offered Plaintiff a lateral move from the
25 eBusiness team to the Snapshot Team so that Plaintiff could work consistent hours of 6:00
26 a.m. to 2:30 p.m. (as Plaintiff requested). Defendant denies each and every remaining
27 allegation in paragraph 49 not specifically admitted herein.

28 50. Responding to the allegations in paragraph 50 of the Complaint, Defendant

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denies said allegations.

51. Responding to the allegations in paragraph 51 of the Complaint, Defendant denies said allegations.

52. Responding to the allegations in paragraph 52 of the Complaint, Defendant denies said allegations.

53. Responding to the allegations in paragraph 53 of the Complaint, Defendant admits that in or around July of 2015, Defendant announced that Plaintiff was laterally transferring from the position of Inside Sales Manager on the eBusiness team to Inside Sales Manager on the Snapshot Team. Defendant avers that Plaintiff's lateral move became effective on or about August 1, 2015. Defendant denies each and every remaining allegation in paragraph 53 not specifically admitted herein.

54. Responding to the allegations in paragraph 54 of the Complaint, Defendant, upon information and belief, admits that Justin Knight was approximately 33 years old in or around August of 2015. Defendant lacks sufficient information to form a belief as to the remaining allegations contained in paragraph 54 and on that basis denies the same.

55. Responding to the allegations in paragraph 55 of the Complaint, Defendant admits that Plaintiff filed a Charge of Discrimination which is dated May 1, 2015 with the EEOC. Defendant denies each and every remaining allegation in paragraph 55 not specifically admitted herein.

56. Responding to the allegations in paragraph 56 of the Complaint, Defendant admits that on or around Ms. Hernandez sent Plaintiff a letter dated August 6, 2015. Defendant avers that the letter speaks for itself.

57. Responding to the allegations in paragraph 57 of the Complaint, Defendant admits that the EEOC issued a Notice of Right to Sue dated August 6, 2015, in connection with Plaintiff's EEOC Charge No. 846-2015-22014. Defendant denies each and every remaining allegation contained in paragraph 57 not specifically admitted herein.

58. Responding to the allegations in paragraph 58 of the Complaint, Defendant denies said allegations.

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1 59. Responding to the allegations in paragraph 59 of the Complaint, Defendant
2 denies said allegations.

3 60. Responding to the allegations in paragraph 60 of the Complaint, Defendant
4 denies said allegations.

5 61. Responding to the allegations in paragraph 61 of the Complaint, Defendant
6 denies said allegations.

7 62. Responding to the allegations in paragraph 62 of the Complaint, Defendant
8 denies said allegations.

9 63. Responding to the allegations in paragraph 63 of the Complaint, Defendant
10 admits, upon information and belief, that Plaintiff was 56-years-old at the time of his
11 separation from employment with Defendant. Defendant denies each and every remaining
12 allegation contained in paragraph 63 not specifically admitted herein.

13 64. Responding to the allegations in paragraph 64 of the Complaint, said
14 allegation is improper, violates applicable rules of Court, and is the subject of a separately
15 pending Motion to Strike. To the extent an answer is required, Defendant denies each and
16 every allegation contained in paragraph 64 of the Complaint.

17 65. Responding to the allegations in paragraph 65 of the Complaint, Defendant
18 denies said allegations.

19 66. Responding to the allegations in paragraph 66 of the Complaint, Defendant
20 denies said allegations.

21 67. Responding to the allegations in paragraph 67 of the Complaint, Defendant
22 denies said allegations.

23 68. Responding to the allegations in paragraph 68 of the Complaint, Defendant
24 admits that Plaintiff filed a charge of discrimination with the EEOC which is dated
25 February 16, 2016 against Defendant. Defendant denies each and every remaining
26 allegation contained in paragraph 68 not specifically admitted herein.

27 69. Responding to the allegations in paragraph 69 of the Complaint, Defendant
28 admits that the EEOC issued a Dismissal and Notice of Rights dated August 31, 2018.

1 Defendant denies each and every remaining allegation contained in paragraph 69 not
2 specifically admitted herein.

3 70. Responding to the allegations in paragraph 70 of the Complaint, Defendant
4 denies said allegations.

5 **COUNT I**

6 **(Violation of the ADA and ADAAA)**

7 71. Defendant incorporates by reference herein the answers, defenses,
8 responses, denials and averments to all allegations contained within paragraphs 1 through
9 70 above as though fully set forth herein.

10 72. Responding to the allegations in paragraph 72 of the Complaint, Defendant
11 denies said allegations.

12 73. Responding to the allegations in paragraph 73 of the Complaint, Defendant
13 denies said allegations.

14 74. Responding to the allegations in paragraph 74 of the Complaint, Defendant
15 denies said allegations.

16 75. Responding to the allegations in paragraph 75 of the Complaint, Defendant
17 denies said allegations.

18 76. Responding to the allegations in paragraph 76 of the Complaint, Defendant
19 denies said allegations.

20 77. Responding to the allegations in paragraph 77 of the Complaint, Defendant
21 denies said allegations.

22 78. Responding to the allegations in paragraph 78 of the Complaint, Defendant
23 denies said allegations.

24 79. Responding to the allegations in paragraph 79 of the Complaint, Defendant
25 denies said allegations.

26 80. Responding to the allegations in paragraph 80 of the Complaint, Defendant
27 denies said allegations.

28 81. Responding to the allegations in paragraph 81 of the Complaint, Defendant

denies said allegations.

82. Responding to the allegations in paragraph 82 of the Complaint, Defendant denies said allegations.

83. Responding to the allegations in paragraph 83 of the Complaint, Defendant denies said allegations.

COUNT II

(Retaliation in Violation of the ADA)

84. Defendant incorporates by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 83 above as though fully set forth herein.

85. Responding to the allegations in paragraph 85 of the Complaint, Defendant avers that said allegations are conclusions of law that do not require an answer. To the extent that an answer is required, Defendant denies said allegations.

86. Responding to the allegations in paragraph 86 of the Complaint, Defendant denies said allegations.

87. Responding to the allegations in paragraph 87 of the Complaint, Defendant denies said allegations.

88. Responding to the allegations in paragraph 88 of the Complaint, Defendant denies said allegations.

89. Responding to the allegations in paragraph 89 of the Complaint, Defendant denies said allegations.

90. Responding to the allegations in paragraph 90 of the Complaint, Defendant denies said allegations.

91. Responding to the allegations in paragraph 91 of the Complaint, Defendant denies said allegations.

COUNT III**(Age Discrimination in Violation of the ADEA)**

92. Defendant incorporates by reference herein the answers, defenses, responses, denials and averments to all allegations contained within paragraphs 1 through 91 above as though fully set forth herein.

93. Responding to the allegations in paragraph 93 of the Complaint, Defendant denies said allegations.

94. Responding to the allegations in paragraph 94 of the Complaint, Defendant denies said allegations.

95. Responding to the allegations in paragraph 95 of the Complaint, Defendant denies said allegations.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the damages or other relief sought in his prayer for relief.

WHEREFORE, Defendant requests that each and every count of Plaintiff's Complaint be denied in its entirety, that Plaintiff take nothing, and that Defendant be awarded its reasonable attorneys' fees and costs pursuant to any statutes and rules that would allow Defendant to recover its attorneys' fees, costs, or other relief.

DEFENDANT'S AFFIRMATIVE DEFENSES

1. All allegations set forth in Plaintiff's Complaint that are not specifically admitted herein are denied.

2. Plaintiff's claims are barred, in whole or in part, by his failure to state a claim upon which relief may be granted.

3. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

4. Plaintiff's claims are barred, in whole or in part, by his failure to mitigate damages.

5. Plaintiff's claims are barred, in whole or in part, by his failure to exhaust

1 administrative remedies.

2 6. Plaintiff's claims are barred, in whole or in part, by the after acquired
3 evidence doctrine.

4 7. Plaintiff's claims are barred, in whole or in part, pursuant to the
5 *Farragher/Ellerth* defense because Defendant exercised reasonable care to prevent and
6 promptly correct any alleged harassment or retaliatory conduct.

7 8. Plaintiff's claims are barred, in whole or in part, pursuant to the
8 *Farragher/Ellerth* defense because Plaintiff unreasonably failed to take advantage of the
9 preventative and corrective opportunities provided by Defendant or to otherwise avoid
10 harm.

11 9. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver,
12 laches, estoppel, and/or unclean hands.

13 10. Plaintiff's claims are barred, in whole or in part, because accommodating
14 Plaintiff would have created an undue hardship to the operation of Defendants' business.

15 11. Plaintiff's claim for punitive damages is barred, in whole or in part, by their
16 failure to state facts sufficient to support a punitive damages claim.

17 12. Plaintiff's claim for punitive damages is barred, in whole or in part, by the
18 Arizona and United States Constitution.

19 13. Defendant reserves the right to amend and/or add affirmative defenses as
20 discovery proceeds.

21 **WHEREFORE**, Defendant prays as follows:

22 A. That each and every count of Plaintiff's Complaint be denied in its entirety,
23 and that Plaintiff take nothing by this action;

24 B. That Judgment be entered in favor of Defendant;

25 C. That Defendant be awarded its reasonable attorneys' fees and costs incurred
26 herein pursuant to any and all statutes and rules that would allow Defendant to recover its
27 attorney fees, costs, or other relief;
28

1 D. That Defendant be awarded pre- and post-judgment interest on the foregoing
2 amounts at the maximum rate permitted by law; and

3 E. For such other and further relief as the Court deems just and proper.

4 DATED this 1st day of April 2019.

5 FISHER & PHILLIPS LLP

6
7 By: s/ Lori A. Guner

8 Shayna H. Balch

9 Lori A. Guner

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11 Phoenix, Arizona 85012-2407

12 Attorneys for Defendant

13 WM Corporate Services, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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